IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5254 of 2001

to

FIRST APPEALNo 5259 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPL.LAQ OFFICER

Versus

RAMESHBHAI MURJIBHAI PATEL

Appearance:

Ms. Harsha Devani, ASSTT. GOVERNMENT PLEADER
for appellants in all matters.
MR KM SHETH for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

and

MR.JUSTICE KUNDAN SINGH

Date of decision: 20/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

All these appeals are being disposed of by this common judgment and order as they are arising out of the impugned common judgment and award dated 17.4.2001 passed by the learned 3rd Joint Civil Judge(S.D.), Bharuch passed in Land Reference case nos. 624 of 1989 to 629 of 1989. Notification under section 4 of the Land Acquisition Act (For short "the Act") was issued for acquiring the lands situated at village Kotiyamu of Ta: Jhagadia, Dist: Bharuch for public purpose of irrigation tank at Andhara village. It was followed by notification dated 6.10.88 issued under section 6 of the Act. The Special Land Acquisition Officer passed his award under section 11 of the Act on 28.2.1989 whereby the respondents-claimants-owners of the lands were awarded compensation at the rate of Rs. 125/- per Are. Being aggrieved and dissatisfied with the award dated 28th February, 1989 passed by the Land Acquisition Officer, all the claimants filed Land Reference case nos. 624 to 629 of 1989 before the court of 3rd Joint Civil Judge (S.D.), Bharuch and claimed Rs. 750/- per Are. Surprisingly, the learned Judge passed the impugned common judgment and award dated 17.4.2001 passed in Land Reference case nos. 6242 to 6290 of 1989 fixing the market price of the lands acquired at the rateof Rs. 900/- per Are. This impugned common judgment and award dated 17.4.2001 passed by the learned learned trial Judge is challenged by the appellant Special Land Acquisition Officer in these appeals.

2. The learned Assistant Government Pleader appearing for the appellant in all these appeals submitted that the learned Judge ought not to have awarded more than Rs. 750/- per Are to the claimants which were claimed by them before the Court in Reference cases. In support of her submissions, she has relied upon the judgmentof the Hon'ble Supreme Court in the case of Ujjain Vikas Pradhikaran vs. Tarachand and another reported in AIR 1996, SC, 2777.

3. However, learned counsel Mr. Sheth appearing for the respondents-claimants in these appeals submitted that prior to the year 1984, there was an embargo for awarding the claim more than what has been claimed by the claimants, but that embargo is now lifted

after the amendment introduced in 1984 under section 25 of the Land Acquisition Act. He submitted that under Section 25 of the Act, the amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under section 11 of the Act, but there is no outer limit for the Court to award the amount to the claimants. He submitted that if the Court is satisfied then it can always award more than what has been claimed by the claimants. He submitted that in the instant case, after relying upon the judgment of the Reference Court in the case of adjoining land owners of Vasna village where Rs. 815/- per Are was awarded 815/- and considering the evidence of the claimant Rameshbhai Patel, the Reference Court has awarded Rs. 900/- per Are against the claim of the claimant of Rs. 750/- per Are, therefore, this Court should not interfere with such award in these appeals. In support of his submissions, Mr. Sheth has tried to rely upon the judgment of the Hon'ble Supreme Court in the case of The Land Acquisition Officer cum DSWO A.P. vs. M/s. B.V.reddy and Sons reported in AIR 2002, SC, 1045.

4. Prior to the amendment which was introduced in the year 1984, the Court had no powers to award the compensation in excess of the amount claimed pursuant to the notice issued under sections 9 and 10 of the Act as there was a specific provision under section 25(2) of the Act. However, sub-section (2) of section 25 was deleted by Amendment Act 68 of 1984 in the year 1984 and the restriction on exercise of the power of the Court was removed. We have carefully gone through the judgment of the Hon'ble Supreme Court in the case of B.V.Reddy(Supra) and from the aforesaid judgment, we are not able to say that the Hon'ble Supreme Court has laid down that though the claimants had not claimed more in their reference cases before the Court, still the Court can award more to the claimants. Whereas in the case of B.V.Reddy (Supra) the Hon'ble Supreme Court has made it absolutely clear that when claimant claims compensation at a particular rate, he assessed market value at a particular rate and then claimed compensation. Having assessed the compensation at that particular rate, the question emerged, Whether the Court would grant higher compensation than was assessed by the party ? The Hon'ble Supreme Court answered it in the negative. Full Bench of this Court, where one of us (Kundan Singh,J) was a party to the judgment, in the case of Dr. Urmila J. Sangani vs. Pragjibhai Mohanlal Luvana reported in 2000(2) GLR, 1281 had an occasion to consider the judgment of the Hon'ble Supreme Court in the case of B.V.Reddy (Supra) and having considered the same with

other judgments of the Hon'ble Supreme Court and of this Court, the Full Bench of this Court clearly held that the Tribunal cannot award compensation higher than what was claimed by the claimants.

5. It is true that the claimant Rameshbhai Patel exh. 8 has stated in his evidence that their lands were irrigated lands and the lands of village Vasna for which the award of Rs. 815/- per Are was passed by the Reference Court was non-irrigated lands. However, from the judgment of the learned Judge, it clearly appears that there was a facility of irrigation in village Vasna also. It appears to us that after claiming Rs. 750/per Are before the Reference Court, the claimants have claimed more from the Reference Court without amending the pleadings and raising their claim. In the instant case, the Special Land Acquisition Officer passed the award under section 11 of the Act way back on 20th February, 1989 and awarded only Rs. 125/- per Are against which they filed reference cases in the year 1989 and claimed Rs. 750/- per Are. It is clear that as an afterthought, in the evidence, they tried to exaggerate the claim and claimed Rs. 900/- per Are, having initially claime the compensation at the rate of Rs. 750/- per Are. In the instant case, the claimants assessed the market value of the lands at the rate of Rs. 750/- per Are in the year 1989 and, accordingly, they sought compensation from the reference Court in the year 1989. Having assessed the compensation at the rate of Rs. 750/- per Are, the question arises for our consideration is; whether the Court could have granted more compensation to the claimants than what was claimed by them ? Obviously, the answer would be '"No". Having restricted their claim to Rs. 750/- per Are before the reference Court, it was not open to the court to award more at the rate of Rs. 900/- per are.

6. In view of the above discussion, all these appeals are required to be partly allowed and the impugned common judgment and award passed by the learned reference Court awarding Rs. 900/- per Are to all the respondents-claimants is modified to the extent that the respondents-claimants are to be paid compensation at the rate of Rs. 750/- per Are. In the instant case, the respondents-claimants have not filed cross-objections, but in view of the judgment of the Constitutional Bench of the Hon'ble Supreme Court of India in the case of Sundar vs. Union of India, reported in 2001(7) SCC 211, the respondents-claimants would be entitled to get the interest on the amount awarded under section 23(2) and 23(1)(A) of the Land Acquisition Act and they are also

entitled to get 12% interest towards difference on the amount so awarded under sections 23(2) and 23(1)(A) of the Land Acquisition Act. Accordingly, while partly allowing all these appeals, the appellants are directed to pay the same to the respondents-claimants at the earliest and not later than 3 months from the date of receipt of the certified copy of the judgment and Award.

7. At this stage, learned counsel Mr. Sheth submitted that the amount is already disbursed to the claimants. If it is so, then the learned Judge may calculate the amount awarded by us for solatium and interest on it under sections 23(1) and 23(2) of the Act and adjust the said amount with what has been already paid to the claimants. After adjusting the said amount, if amount is due to the claimants, then the claimants shall pay the same to the respondents, otherwise the claimants shall pay the difference amount, within a period of three months from today. All these appeals are partly allowed with costs. Office is directed to draw the award accordingly in all these appeals within one month from today.

(B.J.Shethna,J)

(Kundan Singh,J)

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